

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

NACHMAN HELBRANS, MAYER ROSNER,
ARON ROSNER, JACOB ROSNER, MATITYAU
MOSHE MALKA, and MORDECHAY MALKA,

Defendants.

USDC SDNY
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S2 19-CR-497-01 (NSR)
 S2 19-CR-497-02 (NSR)
 S2 19-CR-497-03 (NSR)
 S2 19-CR-497-04 (NSR)
 S2 19-CR-497-05 (NSR)
 S2 19-CR-497-09 (NSR)
 ORDER

NELSON S. ROMÁN, United States District Judge:

The initial indictments in this matter were filed in July 2019. (ECF Nos. 49, 52.) In November and December 2020, Defendants filed counseled pretrial motions. (ECF Nos. 120, 123, 125, 131.) In February and March 2021, following hearings, the Court granted the application of Nachman Helbrans (“Helbrans”), Mayer Rosner, Matityau Moshe Malka, and Mordechay Malka’s to represent themselves *pro se* and appointed standby counsel to assist them.¹ (ECF Nos. 183, 194, 195, and 198.) On April 19, 2021, the Government filed a superseding indictment (S2) against all Defendants, adding two additional charges as to Defendants Helbrans and Mayer Rosner. (ECF No. 229.) On July 8, 2021, the Court issued an Opinion and Order addressing the counseled pretrial motions.² (ECF No. 287.) Also on July 8, 2021 the Court set a schedule for the *pro se* Defendants to file non-duplicative pre-trial motions under which all motions were due on August 9, 2021. (ECF No. 291). As of today, August 13, 2021, no *pro se* pre-trial motions have been filed.

Instead, on August 11, 2021, the Court received a message from *pro se* Defendant Helbrans through his standby counsel indicating that although Helbrans wishes to file a motion both as to

¹ On June 7, 2021, the Court granted Jacob Rosner’s request to represent himself and appointed standby counsel. (ECF Nos. 271, 272.)

² A separate Opinion and Order addressing Helbrans and Matityau Moshe Malka’s counseled suppression motions was issued August 13, 2021. (ECF No. 309.)

the charges originally brought and to the new charges now pending against him, he was unable to file his motion on or before August 9, 2021 due to “insurmountable difficulties.” (ECF No. 306.) On August 12, 2021, the Court received a similar message from Mayer Rosner. (ECF No. 307.) None of the other pro se Defendants have communicated with the Court nor have they sought an extension of the deadline to file their motions.

On August 13, 2021, the Government responded to the letters of Helbrans and Mayer Rosner stating that it “does not object to the defendants’ request for a conference, but requests that the Court order that, by August 20, 2021, any defendants wishing to file supplemental motions submit to the Court (1) a list of the motions they wish to make; (2) an explanation for why those motions could not be filed by the Court’s previously imposed deadline; and (3) an explanation as to how much additional time they would need to file each particular motion, and why they need that much time.” (ECF No. 308.)

EXTENSION OF PRETRIAL MOTION SCHEDULE

Defendants have been on notice for nearly a year that if their motions to represent themselves *pro se* were granted, they would be permitted to file *pro se* pretrial motions. At status conferences in March 2021—after Defendants Helbrans, Mayer Rosner, Matityau Moshe Malka and Mordechay Malka’s applications to represent themselves *pro se* were granted—the Court confirmed that a schedule for supplemental pre-trial briefing would be set once *pro se* Defendants received laptops necessary to prepare their defense. (Minute Entries dated March 4 and March 19, 2021.) These laptops were provided to the Government on or before May 20, 2021. (ECF No. 251.) At a status conference on July 9, 2021, it was confirmed that Defendants Helbrans, Mayer Rosner, Matityau Moshe Malka, and Mordechay Malka had received their laptops.

In other words, the *pro se* Defendants have been aware for many months that they would have the opportunity to file supplemental pre-trial motions and, at the Defendants' request, the briefing schedule was not set until the majority of the *pro se* Defendants received their laptops. Even before the motion schedule was set, they had a significant amount of time to contemplate their anticipated motions and to prepare them. As the Government observed in its letter, the Court's August 9, 2021 deadline was "(1) more than two years after the issuance of the initial indictment; (2) more than 17 months after [Helbrans and Mayer Rosner] expressed a desire to file pro se motions; (3) more than five months after [Helbrans, Mayer Rosner, Matityau Moshe Malka, and Mordechay Malka] were allowed to proceed pro se; and (4) over 100 days after the issuance of the superseding indictment." (ECF No. 308.)

Despite repeated requests for permission to file *pro se* pretrial motions beginning in March 2020 (ECF No. 72), and repeated assurances by the Court that they would be permitted to do so, no *pro se* Defendant filed a motion on or before the deadline of August 9, 2021 and only two, Helbrans and Mayer Rosner, have communicated with the Court indicating that they still wish to file motions but were unable to timely do so.³

The Court has repeatedly cautioned *pro se* Defendants that it can and must treat them as it would any other party, and that as detained *pro se* Defendants it might be difficult for them to properly represent themselves. Nonetheless, the Court will extend the *pro se* Defendants' deadline to file their motions as follows:

Each *pro se* Defendant must confer with his standby counsel on or before Wednesday, August 18, 2021, to create a list of the motions he plans to file. Standby counsel for each *pro*

³ The Government's letter indicates that on August 11, 2021, standby counsel for Mordechay and Matityau Moshe Malka advised the Government that their clients also still wish to file motions but were unable to timely do so. (ECF No. 308 at 1 n.1.)

***se* Defendant must then file a letter with the Court on or before Friday, August 20, 2021, listing the motions that his client intends to file.**

Additionally, the Court extends the time for all *pro se* Defendants to file their motions to August 31, 2021; the Government's opposition shall be filed on or before September 17, 2021; reply papers shall be filed on or before September 27, 2021.⁴ As set forth in the Court's July 8, 2021 Order at ECF No. 291, each *pro se* Defendant must file his own motion and the total length of each Defendant's motion is limited to forty (40) typewritten pages total. To clarify: if a Defendant chooses to join in an argument made by a co-Defendant in the Co-Defendant's motion, the number of pages dedicated to addressing the argument in the Co-Defendant's submission counts towards the joining Defendant's page limit. Standby counsel are directed to assist their respective *pro se* Defendants in the researching, drafting, printing, and filing of any motions.

TRIAL SCHEDULES

The first trial in this case—trying Nachman Helbrans and Mayer Rosner⁵—will begin on October 18, 2021 or, in the alternative, October 25, 2021, pending approval from the SDNY

⁴ Insofar as the *pro se* Defendants seek a conference rather than an extension, in-person conferences are already scheduled for September 2021 and cannot be held sooner. Defendants Helbrans, Mayer Rosner, Matityau Moshe Malka, and Mordechay Malka have indicated that they will not waive their physical presence for conferences in this matter. (ECF Nos. 290, 292, and 296 and Minute Entry dated July 9, 2021.) Accordingly, none of these Defendants appeared at the telephonic conferences scheduled in July 2021. (See Minute Entry dated July 9, 2021 and ECF No. 302.) Defendants Helbrans, Mayer Rosner, and Aron Rosner are scheduled for an in-person conference on September 13, 2021 at 11:00 AM or, in the alternative, September 14, 2021 at 3:00 PM. Defendants Jacob Rosner, Matityau Moshe Malka, and Mordechay Malka are scheduled for an in-person conference on September 23, 2021 at 11:30AM or, in the alternative, September 24, 2021, at 1:30 PM. At the upcoming conferences, Defendants will have the opportunity to raise issues with the Court.

As explained below, the trial of Helbrans and Mayer Rosner is scheduled to begin on October 18, 2021, or in the alternative, October 25, 2021. If, due to the challenges they are encountering, Helbrans and Mayer Rosner wish to withdraw their request for self-representation, they may do so, and the Court will re-appoint standby counsel to represent them. If, due to the challenges they are encountering, they want to seek adjournment of their October 2021 trial, they may do so. However, the Court is unlikely to be able to reschedule the trial until May 2022.

⁵ The Government filed a letter on July 12, 2021 requesting the following trial schedule: Trial 1: Nachman Helbrans and Mayer Rosner; Trial 2: Mordechay Malka and Jacob Rosner; and Trial 3: Aron

Trial Committee. Jury selection will begin on the morning of the trial date. **The deadlines for this first trial are as follows: voir dire, request to charge, all proposed jury instructions, proposed verdict sheet, witness lists, exhibit lists, and copies of pre-marked, tabbed exhibits (in binders) shall be submitted to chambers by October 12, 2021.** The Government previously indicated that it would provide the Defendants with 3500 materials well in advance of trial. **Any remaining 3500 materials must be turned over to Defendants on or before October 1, 2021.**

Two hard copies of all the above documents are due to Chambers on the morning of the respective deadline date. The motions *in limine* briefing schedule is as follows: **motions in limine shall be filed September 24, 2021; responses shall be filed October 1, 2021; and replies shall be filed October 8, 2021.** Two sets of all motion *in limine* documents are due the morning of the respective deadline date. Standby counsel are directed to assist their respective *pro se* Defendants in the researching, drafting, printing and filing of the above trial submissions and motions *in limine*.

The trial date for the next two Defendants will be May 2, 2022, or, in the alternative, May 9, 2022, pending approval from the SDNY Trial Committee.

All standby counsel are again reminded that they should be prepared to step in to represent their respective Defendants at trial if necessary.

CONCLUSION

1. Each *pro se* Defendant must confer with his standby counsel on or before Wednesday, August 18, 2021, to create a list of the motions he plans to file. Standby counsel for each *pro se* Defendant must then file a letter with the Court on or before Friday, August 20, 2021, listing the motions that his client intends to file.

Rosner and Matityau Moshe Malka. (ECF No. 299.) At this time, the Court confirms only that the first trial will involve Nachman Helbrans and Mayer Rosner.

2. The Court extends the time for all *pro se* Defendants to file their supplemental pre-trial motions to August 31, 2021; the Government's opposition shall be filed on or before September 17, 2021; reply papers shall be filed on or before September 27, 2021.

3. The first trial in this case—trying Nachman Helbrans and Mayer Rosner—is scheduled to begin on October 18, 2021 or, in the alternative, October 25, 2021, pending approval from the SDNY Trial Committee. Voir dire, request to charge, all proposed jury instructions, proposed verdict sheet, witness lists, exhibit lists, and copies of pre-marked, tabbed exhibits (in binders) shall be submitted to chambers by October 12, 2021. Any remaining 3500 materials must be turned over to Defendants on or before October 1, 2021.

4. The trial date for the next two Defendants will be May 2, 2022, or, in the alternative, May 9, 2022, pending approval from the SDNY Trial Committee.

If any *pro se* Defendant is unable to meet any deadline(s) set forth in this order, he must in advance of the deadline inform the Court by writing directly to the Court or through standby counsel, explaining (a) what deadline he cannot meet, (b) why he cannot meet the deadline, (c) how much additional time he needs to meet the deadline and why he needs that much time.

Standby counsel are directed to serve a copy of this order on their respective *pro se* Defendants and to file proof of service on the docket.

Dated: August 13, 2021
White Plains, New York

SO ORDERED:



NELSON S. ROMÁN
United States District Judge